

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

HOLY CROSS HOSPITAL¹

Employer

And

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 399

Petitioner

Case 13-RC-20767

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All full-time and regular part-time skilled maintenance employees employed by the Employer at its facility currently located at 2701 W. 68th Street, Chicago, Illinois, including registry employees, maintenance engineers, medical equipment technicians, painters, plant electricians, shift engineers, telecommunications technicians, motherhouse engineers, carpenters, computer operators, plumbers and maintenance mechanics; but excluding groundskeepers and all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible

shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 399.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before May 29, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by June 5, 2002.

DATED May 22, 2002 at Chicago, Illinois.

/s/Elizabeth Kinney

Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The names of the parties appear as amended at the hearing.

2/ The arguments advanced by the parties at the hearing have been carefully considered.

3/ The Employer is a corporation engaged in the business of providing acute health care services.

4/ The Petitioner and Employer stipulated, and I find, that the above skilled maintenance unit constitutes an appropriate unit under the Act. The Petitioner and Employer further stipulated that only those registry employees who met the requisite test for hours worked shall be eligible to vote. Under the Board's most longstanding and widely used test for voter eligibility in these circumstances, an on-call employee is found to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if the employee regularly averages four (4) or more hours of work per week for the last quarter prior to the eligibility date. *Sisters of Mercy Health Corp.*, 298 NLRB 483, 484 (1990); *Davidson- Paxton Co.*, 185 NLRB 21, 24 (1970). Although no single eligibility formula must be used in all cases, the *Davidson-Paxton* formula is the one most frequently used, absent a showing of special circumstances. *Trump Taj Mahal Casino*, 360 NLRB 294, 295 (1992). Neither the Petitioner nor the Employer argued any special circumstances. There are approximately 32 employees in the unit.

Finally, I turn to the issue of the scheduling of the election. In the record, the Petitioner requested that the election be set on a particular date. It is well settled that the mechanics of an election are administrative matters to be decided, after the issuance of the Decision and Direction of Election, by the Regional Director. See *Oneida County Community Action Agency*, 317 NLRB 852 (1995). Consequently, I decline to set the date of the election at this time.

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No Issues Raised